IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-830.

JOHN W. LEWIS, INDIVIDUALLY AND AS SECRETARY OF STATE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

ILLINOIS STATE EMPLOYEES UNION, COUNCIL 34, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, AN UNINCORPORATED LABOR ORGANIZATION, ET AL.,

Respondents.

PETITIONER'S REPLY BRIEF.

We submit that respondents' brief confirms and highlights, rather than refutes, the necessity of granting certiorari in the instant case. As respondents candidly admit, the question of the constitutionality of political patronage employment must be resolved by this Court (Respondents' Brief, p. 4):

> "The Respondents must acknowledge that questions arising from the various state and local patronage systems in relation to rights under the First and Fourteenth Amendments to the Constitution of the United States are substantial and must at some point be resolved."

Despite this admission, respondents fallaciously contend that certiorari should be denied because review would allegedly be "premature" without further proceedings in the District Court. This assertion completely ignores the majority holding below and the present posture of the case. Respondents allege that they were dismissed for reasons of political patronage. Three Courts of Appeals and one State Supreme Court have held that such dismissals are constitutional; the majority decision below holds the opposite. If the other courts are correct and the Seventh Circuit wrong, the instant suit must be dismissed even if respondents could prove each and every allegation of their complaint. Further proceedings below would be manifestly useless.

Respondents themselves recognize that the alleged factual issues to be resolved below are merely "defenses" to the Seventh Circuit's holding that patronage dismissals are unconstitutional. (Respondents' Brief, pp. 4-5.) In other words, the factual questions only become relevant if the Seventh Circuit is right and the Second, Eighth, and District of Columbia Circuits, as well as the Pennsylvania Supreme Court, are wrong. Yet, this diametric conflict among the Circuits on the threshhold issue of the constitutionality of political patronage is precisely the reason Petitioner has urged in now seeking certiorari. Review by this Court alone can resolve the conflict.

Moreover, review is urgently needed *now*, not several years hence as respondents argue. Respondents are disingenuous at best in claiming that denial of certiorari "would not engender further confusion or conflicts among the courts." (Respondents' Brief, p. 6.) The Southern District of New York has already followed *Alomar* in upholding the failure to reappoint a city marshal for reasons of political patronage, *Moldawsky* v. *Lindsay*, 341 F. Supp. 1393 (S. D. N. Y. 1972). Within the Seventh Circuit itself,

all proceedings in two other cases involving political patronage dismissals have been suspended pending a decision by this Court in the instant action. *Burns* v. *Elrod*, Docket Nos. 71-1285 and 72-1541, and *Shakman* v. *Democratic Organization of Cook County*, 69 C 2145 (Memorandum Opinion of Decker, J., December 15, 1972). As Judge Campbell observed in his occurring opinion below, "it can reasonably be expected that the conflict and attendant confusion will grow and multiply as other courts are called upon to consider the same issue." (Petition for Certiorari, Appendix A, p. A-28.)

CONCLUSION.

For the foregoing reasons, we respectfully submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

DON H. REUBEN,
LAWRENCE GUNNELS,
STEVEN P. HANDLER,
130 East Randolph Drive,
Chicago, Illinois 60601,
Attorneys for Petitioner.

Of Counsel:
KIRKLAND & ELLIS,
Chicago, Illinois.

January 17, 1973.